

**Title 38, Article 5-A**  
**PROTECTION OF NATURAL RESOURCES**

**§ 480-A. Findings; purpose**

The Legislature finds and declares that the State's rivers and streams, great ponds, fragile mountain areas, freshwater wetlands, significant wildlife habitat, coastal wetlands and coastal sand dunes systems are resources of state significance. These resources have great scenic beauty and unique characteristics, unsurpassed recreational, cultural, historical and environmental value of present and future benefit to the citizens of the State and that uses are causing the rapid degradation and, in some cases, the destruction of these critical resources, producing significant adverse economic and environmental impacts and threatening the health, safety and general welfare of the citizens of the State.

The Legislature further finds and declares that there is a need to facilitate research, develop management programs and establish sound environmental standards that will prevent the degradation of and encourage the enhancement of these resources. It is the intention of the Legislature that existing programs related to Maine's rivers and streams, great ponds, fragile mountain areas, freshwater wetlands, significant wildlife habitat, coastal wetlands and sand dunes systems continue and that the Department of Environmental Protection provide coordination and vigorous leadership to develop programs to achieve the purposes of this article. The well-being of the citizens of this State requires the development and maintenance of an efficient system of administering this article to minimize delays and difficulties in evaluating alterations of these resource areas.

The Legislature further finds and declares that the cumulative effect of frequent minor alterations and occasional major alterations of these resources poses a substantial threat to the environment and economy of the State and its quality of life.

**§ 480-B. Definitions**

As used in this article, unless the context otherwise indicates, the following terms have the following meanings.

**1. Coastal sand dune systems.** "Coastal sand dune systems" means sand and gravel deposits within a marine beach system, including, but not limited to, beach berms, frontal dunes, dune ridges, back dunes and other sand and gravel areas deposited by wave or wind action. Coastal sand dune systems may extend into coastal wetlands.

**2. Coastal wetlands.** "Coastal wetlands" means all tidal and subtidal lands; all areas with vegetation present that is tolerant of salt water and occurs primarily in a salt water or estuarine habitat; and any swamp, marsh, bog, beach, flat or other contiguous lowland that is subject to tidal action during the highest tide level for the year in which an activity is proposed as identified in tide tables published by the National Ocean Service. Coastal wetlands may include portions of coastal sand dunes.

**2-A. Dredge spoils.** "Dredge spoils" means sand, silt, mud, gravel, rock or other sediment or material that is moved from coastal wetlands.

**2-B. Forest management activities.** "Forest management activities" means timber stand improvement, timber harvesting activities, forest products harvesting and regeneration of forest stands. For the purposes of this definition, "timber harvesting activities" means timber harvesting, the

construction and maintenance of roads used primarily for timber harvesting and other activities conducted to facilitate timber harvesting. For the purposes of this definition, "timber harvesting" means the cutting or removal of timber for the primary purpose of selling or processing forest products.

**2-C. Forested wetland.** "Forested wetland" means a freshwater wetland dominated by woody vegetation that is 6 meters tall, or taller.

**2-D. Floodplain wetland.** "Floodplain wetland" means lands adjacent to a river, stream or brook that are inundated with floodwater during a 100-year flood event and that under normal circumstances support a prevalence of wetland vegetation typically adapted for life in saturated soils.

**3. Fragile mountain areas.** "Fragile mountain areas" means areas above 2,700 feet in elevation from mean sea level.

**4. Freshwater wetlands.** "Freshwater wetlands" means freshwater swamps, marshes, bogs and similar areas that are:

A. Deleted. Laws 1995, ch. 460, § 1.<sup>1</sup>

B. Inundated or saturated by surface or groundwater at a frequency and for a duration sufficient to support, and which under normal circumstances do support, a prevalence of wetland vegetation typically adapted for life in saturated soils; and

C. Not considered part of a great pond, coastal wetland, river, stream or brook.

**5. Great ponds.** "Great ponds" means any inland bodies of water which in a natural state have a surface area in excess of 10 acres and any inland bodies of water artificially formed or increased which have a surface area in excess of 30 acres.

**5-A. Mooring.** "Mooring" means equipment, such as anchors, chains and lines, for holding fast a vessel, aircraft, floating dock or buoy.

**6. Normal high water line.** "Normal high water line" means that line along the shore of a great pond, river, stream, brook or other nontidal body of water which is apparent from visible markings, changes in the character of soils due to prolonged action of the water or from changes in vegetation and which distinguishes between predominantly aquatic and predominantly terrestrial land. In the case of great ponds, all land below the normal high water line shall be considered the bottom of the great pond for the purposes of this article.

**7. Permanent structure.** "Permanent structure" means any structure constructed or erected with a fixed location or attached to a structure with a fixed location for a period exceeding 7 months each year, including, but not limited to, causeways, piers, docks, concrete slabs, piles, marinas, retaining walls and buildings.

**8. Protected natural resource.** "Protected natural resource" means coastal sand dune system, coastal wetlands, significant wildlife habitat, fragile mountain areas, freshwater wetlands, great ponds or rivers, streams or brooks, as these terms are defined in this article.

**8-A. Transportation reconstruction or replacement project.** "Transportation reconstruction or replacement project" means the improvement of an existing transportation facility to modern design standards without expanding its function or creating any additional roadways, facilities or structures. These projects are limited to:

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<sup>1</sup>Repeal effective September 29, 1995.

- A. Highway or bridge alignment changes not exceeding a distance of 200 feet between the old and new center lines in any protected natural resource;
- B. Replacement or rehabilitation of the roadway base, pavement and drainage;
- C. Replacement or rehabilitation of bridges or piers;
- D. The addition of climbing lanes, and turning lanes of less than 1,000 feet in length in a protected natural resource; and
- E. Rehabilitation or repair of state-owned railroads.

**9. River, stream or brook.** "River, stream or brook" means a channel between defined banks. A channel is created by the action of surface water and has 2 or more of the following characteristics.

- A. It is depicted as a solid or broken blue line on the most recent edition of the U.S. Geological Survey 7.5-minute series topographic map or, if that is not available, a 15-minute series topographic map.
- B. It contains or is known to contain flowing water continuously for a period of at least 6 months of the year in most years.
- C. The channel bed is primarily composed of mineral material such as sand and gravel, parent material or bedrock that has been deposited or scoured by water.
- D. The channel contains aquatic animals such as fish, aquatic insects or mollusks in the water or, if no surface water is present, within the stream bed.
- E. The channel contains aquatic vegetation and is essentially devoid of upland vegetation.

"River, stream or brook" does not mean a ditch or other drainage way constructed, or constructed and maintained, solely for the purpose of draining storm water or a grassy swale.

**10. Significant wildlife habitat.** "Significant wildlife habitat" means:

A. The following areas to the extent that they have been mapped by the Department of Inland Fisheries and Wildlife or are within any other protected natural resource: habitat, as defined by the Department of Inland Fisheries and Wildlife, for species appearing on the official state or federal list of endangered or threatened animal species; high and moderate value deer wintering areas and travel corridors as defined by the Department of Inland Fisheries and Wildlife; seabird nesting islands as defined by the Department of Inland Fisheries and Wildlife; and critical spawning and nursery areas for Atlantic salmon as defined by the Atlantic Salmon Commission; and

B. Except for solely forest management activities, for which "significant wildlife habitat" is as defined and mapped in accordance with section 480-I by the Department of Inland Fisheries and Wildlife, the following areas that are defined by the Department of Inland Fisheries and Wildlife and are in conformance with criteria adopted by the Department of Environmental Protection or are within any other protected natural resource:

- (1) Significant vernal pool habitat;
- (2) High and moderate value waterfowl and wading bird habitat, including nesting and feeding areas; and
- (3) Shorebird nesting, feeding and staging areas.

## § 480-C. Prohibitions

**1. Prohibition.** A person may not perform or cause to be performed any activity listed in subsection 2 without first obtaining a permit from the department if the activity is located in, on or over any protected natural resource or is located adjacent to any of the following:

- A. A coastal wetland, great pond, river, stream or brook or significant wildlife habitat contained within a freshwater wetland; or
- B. Freshwater wetlands consisting of or containing:
  - (1) Under normal circumstances, at least 20,000 square feet of aquatic vegetation, emergent marsh vegetation or open water, except for artificial ponds or impoundments; or
  - (2) Peatlands dominated by shrubs, sedges and sphagnum moss.

A person may not perform or cause to be performed any activity in violation of the terms or conditions of a permit.

**2. Activities requiring a permit.** The following activities require a permit:

- A. Dredging, bulldozing, removing or displacing soil, sand, vegetation or other materials;
- B. Draining or otherwise dewatering;
- C. Filling, including adding sand or other material to a sand dune; or
- D. Any construction, repair or alteration of any permanent structure.

**3. Application.**<sup>2</sup>

## § 480-D. Standards

The department shall grant a permit upon proper application and upon such terms as it considers necessary to fulfill the purposes of this article. The department shall grant a permit when it finds that the applicant has demonstrated that the proposed activity meets the following standards.

**1. Existing uses.** The activity will not unreasonably interfere with existing scenic, aesthetic, recreational or navigational uses.

**2. Soil erosion.** The activity will not cause unreasonable erosion of soil or sediment nor unreasonably inhibit the natural transfer of soil from the terrestrial to the marine or freshwater environment.

**3. Harm to habitats; fisheries.** The activity will not unreasonably harm any significant wildlife habitat, freshwater wetland plant habitat, threatened or endangered plant habitat, aquatic or adjacent upland habitat, travel corridor, freshwater, estuarine or marine fisheries or other aquatic life.

In determining whether there is unreasonable harm to significant wildlife habitat, the department may consider proposed mitigation if that mitigation does not diminish in the vicinity of the proposed activity the overall value of significant wildlife habitat and species utilization of the habitat and if there is no specific biological or physical feature unique to the habitat that would be adversely affected by the proposed activity. For purposes of this subsection, "mitigation" means any action

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<sup>2</sup>Repeal effective October 1, 1994. The repealed text read: "This section applies to all protected natural resources statewide without regard to whether they have been mapped pursuant to section 480-I. Significant wildlife habitat that is not within any other protected natural resource must be mapped before this section applies." For applicability requirements now, see Section 480-V and 480-E-1.

taken or not taken to avoid, minimize, rectify, reduce, eliminate or compensate for any actual or potential adverse impact on the significant wildlife habitat, including the following:

- A. Avoiding an impact altogether by not taking a certain action or parts of an action;
- B. Minimizing an impact by limiting the magnitude, duration or location of an activity or by controlling the timing of an activity;
- C. Rectifying an impact by repairing, rehabilitating or restoring the affected environment;
- D. Reducing or eliminating an impact over time through preservation and maintenance operations during the life of the project; or
- E. Compensating for an impact by replacing the affected significant wildlife habitat.

**4. Interfere with natural water flow.** The activity will not unreasonably interfere with the natural flow of any surface or subsurface waters.

**5. Lower water quality.** The activity will not violate any state water quality law, including those governing the classification of the State's waters.

**6. Flooding.** The activity will not unreasonably cause or increase the flooding of the alteration area or adjacent properties.

**7. Sand supply.** If the activity is on or adjacent to a sand dune, it will not unreasonably interfere with the natural supply or movement of sand or gravel within or to the sand dune system or unreasonably increase the erosion hazard to the sand dune system.

**8. Outstanding river segments.** If the proposed activity is a crossing of any outstanding river segment as identified in section 480-P, the applicant shall demonstrate that no reasonable alternative exists which would have less adverse effect upon the natural and recreational features of the river segment.

**9. Dredging.**<sup>3</sup> If the proposed activity involves dredging, dredge spoils disposal or transporting dredge spoils by water, the applicant must demonstrate that the transportation route minimizes adverse impacts on the fishing industry and that the disposal site is geologically suitable. The Commissioner of Marine Resources shall provide the department with an assessment of the impacts on the fishing industry of a proposed dredging operation in the coastal wetlands. The assessment must consider impacts to the area to be dredged and impacts to the fishing industry of a proposed route to transport dredge spoils to an ocean disposal site. The Commissioner of Marine Resources may hold a public hearing on the proposed dredging operation. In determining if a hearing is to be held, the Commissioner of Marine Resources shall consider the potential impacts of the proposed dredging operation on fishing in the area to be dredged. If a hearing is held, it must be within at least one of the municipalities in which the dredging operation would take place. If the Commissioner of Marine Resources determines that a hearing is not to be held, the Commissioner of Marine Resources must publish a notice of that determination in a newspaper of general circulation in the area proposed for the dredging operation. The notice must state that the Commissioner of Marine Resources will accept verbal and written comments in lieu of a public hearing. The notice must also state that if 5 or more persons request a public hearing within 30 days of the notice publication, the Commissioner of Marine Resources will hold a hearing. If 5 or more persons request a public hearing within 30 days of

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<sup>3</sup>Amendments to this section effective September 19, 1997 are affected by an application provision (PL 1997, c. 164, § 2) that provides:

**Sec. 2. Application.** This Act applies to permit applications filed with the Department of Environmental Protection on or after the effective date of this Act.  
This section was later amended by Laws 1999, ch. 248, § 1.

the notice publication, the Commissioner of Marine Resources must hold a hearing. In making its determination under this subsection, the department must take into consideration the assessment provided by the Commissioner of Marine Resources. The permit must require the applicant to:

- A. Clearly mark or designate the dredging area, the spoils disposal route and the transportation route;
- B. Publish in a newspaper of general circulation in the area adjacent to the route the approved transportation route of the dredge spoils; and
- C. Publish in a newspaper of general circulation in the area adjacent to the route a procedure that the applicant will use to respond to inquiries regarding the loss of fishing gear during the dredging operation.

#### **§ 480-E. Permit processing requirements**

The department shall process all permits under this article, except as provided in section 480-E-1, in accordance with chapter 2, subchapter I, and the following requirements.

**1. Municipal notification.** The department may not review a permit without notifying the municipality in which the proposed activity is to occur and considering any comments filed by the municipality within a reasonable period as established by the commissioner.

**2. Water supply notification.** If the resource subject to alteration or the underlying ground water is utilized by a water company, municipality or water district as a source of supply, the applicant for the permit shall, at the time of filing an application, forward a copy of the application to the water company, municipality or water district by certified mail and the department shall consider any comments concerning the application filed with the commissioner within a reasonable period, as established by the commissioner.

**3. Dredge spoils disposal.** The commissioner may not accept an application for dredge spoils disposal in a coastal wetland unless the following requirements are met.

- A. The applicant has collected and tested the dredge spoils in accordance with a protocol approved by the commissioner.
- B. The applicant has published notice of the proposed route by which the dredged materials are to be transported to the disposal site in a newspaper of general circulation in the area adjacent to the proposed route.
- C. The application has been submitted to each municipality adjacent to any proposed marine and estuarine disposal site and route.

Any public hearing held pursuant to this application must be held in the municipality nearest to the proposed disposal site.

**4. Deferrals.** When winter conditions prevent the department or municipality from evaluating a permit application, the department or municipality, upon notifying the applicant of that fact, may defer action on the application for a reasonable period. The applicant may not alter the resource area in question during the period of deferral.

**5. Permission of record owner.** The written permission of the record owner or owners of flowed land is considered sufficient right, title or interest to confer standing for submission of a permit application, provided that the letter of permission specifically identifies the activities being performed and the area that may be used for that purpose. The commissioner may not refuse to accept a permit application for any prohibited activity due to the lack of evidence of sufficient right, title or interest if

the owner or lessee of land adjoining a great pond has made a diligent effort to locate the record owner or owners of flowed land and has been unable to do so.

**6. Permit display.** A person issued a permit pursuant to this article for activities in a great pond watershed shall have a copy of the permit on site while work authorized by that permit is being conducted. Activities exempt by rule from the requirements of this article are not required to be in compliance with this subsection.

**7. Individual permit; maintenance dredging.** Notwithstanding section 344, subsection 7, an individual permit or consistency determination issued by the department pursuant to this article is required for maintenance dredging if the amount of material to be dredged exceeds 50,000 cubic yards.

Notwithstanding section 480-X, if an analysis of alternatives to the dredging project has been completed by the applicant within the previous 10 years pursuant to section 480-X and rules adopted to implement that section as part of an individual permit application, the applicant may update the previous analysis for purposes of obtaining a permit for maintenance dredging under this subsection.

**8. Permit by rule; maintenance dredging.** Maintenance dredging may be performed with a permit by rule only if the applicant has been issued an individual permit for dredging in the same location within the last 10 years.

**9. Permit; reconstruction in V-Zone.** Repealed. Laws 2005, ch. 548, § 1.

**10. Road construction associated with forest management activities.** A permit by rule for road construction or maintenance associated with a forest management activity becomes effective upon receipt of notification by the department as long as:

- A. The road construction or maintenance is eligible for a permit by rule; and
- B. The notification is on a form provided by the department and is complete.

This subsection is repealed August 1, 2002.

**11. Road construction associated with forest management activities.** A permit by rule for road construction or maintenance associated with a forest management activity becomes effective upon receipt of notification by the department as long as:

- A. The road construction or maintenance is eligible for a permit by rule; and
- B. The notification is on a form provided by the department and is complete.

#### **§ 480-E-1. Delegation of permit-granting authority to Maine Land Use Regulation Commission**

The Maine Land Use Regulation Commission shall issue all permits under this article for activities that are located wholly within its jurisdiction and are not subject to review and approval by the department under any other article of this chapter.

**1. Activity located in organized and unorganized area.** If an activity is located in part within an organized area and in part within an area subject to the jurisdiction of the Maine Land Use Regulation Commission, that portion of the activity within the organized area is subject to department review under this article if that portion is an activity pursuant to this article. That portion of the activity within the jurisdiction of the Maine Land Use Regulation Commission is not subject to the requirements of this article except as provided in subsection 2.

**2. Allowed use.** If an activity is located as described in subsection 1, the department may review that portion of the activity within the jurisdiction of the Maine Land Use Regulation Commission if the commission determines that the project is an allowed use within the subdistrict or subdistricts for which it is proposed pursuant to Title 12, section 685-B. A permit from the Maine Land Use Regulation Commission is not required for those aspects of an activity approved by the department under this subsection.

Review by the department of subsequent modifications to a development approved by the department is required, except that the Maine Land Use Regulation Commission shall issue modifications to permits issued by the department pursuant to this article prior to September 18, 1999. The Maine Land Use Regulation Commission shall process these permits and modifications in accordance with the provisions of Title 12, sections 681 to 689 and rules and standards adopted under those sections.

The Maine Land Use Regulation Commission, in consultation with the department, shall annually review land use standards adopted by the commission to ensure that the standards afford a level of protection consistent with the goals of this article, the goals of Title 12, chapter 206-A and the commission's comprehensive land use plan.

#### **§ 480-F. Delegation of permit-granting authority to municipality; home rule**

**1. Delegation.** A municipality may apply to the board for authority to issue all permits under this article or for partial authority to process applications for permits involving activities in specified protected natural resources or for activities included in chapter 305 of the department's rules, addressing permit by rule. The board shall grant such authority if it finds that the municipality has:

- A. Established a planning board and a board of appeals;
- B. Adopted a comprehensive plan and related land use ordinances determined by the State Planning Office to be consistent with the criteria set forth in Title 30-A, chapter 187, subchapter II and determined by the commissioner to be at least as stringent as criteria set forth in section 480-D;
- C. The financial, technical and legal resources to adequately review and analyze permit applications and oversee and enforce permit requirements;
- D. Made provision by ordinance or rule for:
  - (1) Prompt notice to the commissioner of all applications received except for those activities included in chapter 305 of the department's rules, addressing permit by rule; and
  - (2) Prompt notice to the public upon receipt of application and written notification to the applicant and the commissioner of the issuance or denial of a permit stating the reasons for issuance or denial, except for those applications for which no public notice or written decision is required;
- E. Provided an application form that is substantially the same as that provided by the commissioner; and
- F. Appointed a code enforcement officer, certified by the Executive Department, State Planning Office.

**2. Procedure.** The following procedures apply to applications under this article processed by municipalities.



A. For applications processed by municipalities except those described in chapter 305 of the department's rules, no permit issued by a municipality may become effective until 30 days subsequent to its receipt by the commissioner, but, if approved by the department in less than 30 days, the effective date is the date of approval. A copy of the application for the permit and the permit issued by the municipality must be sent to the commissioner, immediately upon its issuance, by registered mail. The department shall review that permit and either approve, deny or modify it as necessary. If the department does not act within 30 days of its receipt of the permit by the municipality, this constitutes its approval and the permit is effective as issued, except that within this 30-day period the department may extend the time for its review an additional 30 days.

B. For those applications for approval of activities described in chapter 305 of the department's rules, a copy of the municipality's action to approve or deny an application must be sent to the commissioner within 14 days of the municipality's decision.

**3. Home rule.** Nothing in this article may be understood or interpreted to limit the home rule authority of a municipality to protect the natural resources of the municipality through enactment of standards that are more stringent than those found in this article.

**4. Joint enforcement.** Any person who violates any permit issued under this section is subject to the provisions of section 349 in addition to any penalties which the municipality may impose. The provisions of this section may be enforced by the commissioner and the municipality that issued the permit.

#### **§ 480-G. Periodic review of delegated authority**

If the board finds that a municipality has failed to satisfy one or more of the criteria listed in section 480-F, the board shall notify the municipality accordingly and make recommendations through which it may establish compliance. The municipality may then submit a modified application for approval.

If, at any time, the board determines that a municipality may be failing to exercise its permit-granting authority in accordance with its approval procedures or the purposes of this article, the board shall notify the municipality of the specific alleged deficiencies and shall order a public hearing of which adequate public notice shall be given to be held in the municipality to solicit public or official comment on the alleged deficiencies. Following the hearing, if the board finds such deficiencies, the board shall revoke the municipality's permit-granting authority. The municipality may reapply for authority at any time.

#### **§ 480-H. Rules; performance and use standards**

In fulfilling its responsibilities to adopt rules pursuant to section 341-D, the board, to the extent practicable, shall adopt performance and use standards for activities regulated by this article. These standards at a minimum must include:

**1. Department of Transportation projects.** By February 15, 1991, requirements for projects that are under the direction and supervision of the Department of Transportation that do not affect coastal wetlands or coastal sand dune systems and that involve only maintenance or repair of public transportation facilities or structures or transportation reconstruction or replacement projects.

A. The Department of Transportation shall meet the following conditions for any project undertaken pursuant to this subsection after February 15, 1991.

(1) All projects must be performed in a manner consistent with this article and in compliance with rules adopted by the board.

(2) The project may not unreasonably harm the protected natural resources covered by this article.

(3) The Department of Transportation and its contractors shall use erosion control measures to prevent sedimentation of any surface waters.

(4) The project may not block any fish passage in any watercourse.

(5) The project may not result in any excessive intrusion of the project into the protected natural resources.

B. Those activities that are exempt from permitting requirements under section 480-Q are not subject to this subsection.

C. The Department of Transportation must notify the commissioner before construction activities begin if the provisions of this subsection are utilized.

#### **§ 480-I. Identification of freshwater wetlands and fragile mountain areas**

**1. Identification by maps.** The commissioner shall map areas meeting the definition of freshwater wetlands and fragile mountain areas set forth in this article and shall periodically review and revise the maps identifying these areas. The data developed under section 546-B may be used for mapping significant wildlife habitat. Maps of significant wildlife habitats must be adopted by rule pursuant to the Maine Administrative Procedure Act to the extent that those habitats are identified by the Department of Inland Fisheries and Wildlife.

**2. Procedures.** The maps and subsequent amendments identifying freshwater wetlands, significant wildlife habitat and fragile mountain areas shall be subject to the following procedures.

A. Preliminary maps of the affected area or amendments of a map shall be sent to the municipal officers or their designees.

B. Upon receipt of the proposed maps, the municipal officers of each municipality shall take any action they determine appropriate to increase public participation in this identification and delineation, but shall return their comments to the commissioner within a 90-day period.

**3. Progress report.** The commissioner and the Commissioner of Inland Fisheries and Wildlife shall jointly report by January 1, 1998 and on or before January 1st of every odd-numbered year thereafter to the joint standing committees of the Legislature having jurisdiction over natural resource matters and inland fisheries and wildlife matters on the progress of the mapping of significant wildlife habitats.

#### **§ 480-J. Maps**

Maps delineating the boundaries of freshwater wetlands, significant wildlife habitat and fragile mountain areas that meet the criteria of this article shall be available at the offices of the municipality and of the regional council in which the resources are located.

#### **§ 480-K. Data bank**

The commissioner shall maintain, in cooperation with other state agencies, a data bank containing all the known information pertaining to all resources of state significance, as enumerated in this

article, within the State. All governmental agencies, state or federal, shall make available to the commissioner information in their possession relating to these resources.

#### **§ 480-L. Research**

The commissioner, in cooperation with other state agencies, is authorized to conduct research and studies to determine how the resource values of resources of state significance can be restored and enhanced.

#### **§ 480-M. Funds**

The department is the public agency of the State authorized to accept funds, public and private, for the purposes of this article.

#### **§ 480-N. Lake Restoration and Protection Fund**

**1. Fund purposes and administration.** There is established a nonlapsing Lake Restoration and Protection Fund, from which the commissioner may pay up to 50% of the eligible costs incurred in a lake restoration or protection project, except that projects addressing technical assistance, public education or research issues may be paid up to 100%. Eligible costs include all costs except those related to land acquisition, legal fees and debt service. All money credited to that fund must be used by the commissioner for projects to improve or maintain the quality of lake waters in the State and for no other purpose. The commissioner may authorize the State Controller to draw a warrant for such funds as may be necessary to pay the lawful expenses of the lake restoration or protection project, up to the limits of the money duly authorized. Any balance remaining in the fund must continue without lapse from year to year and remain available for the purpose for which the fund is established and for no other purpose.

**2. Money.** Money in the Lake Restoration and Protection Fund may not be used for projects in or on lakes for which public access is not provided.

**3. Intensive staffing program.** The commissioner shall establish an intensive staffing program to provide adequate staffing at both the state and regional levels. The commissioner shall provide technical information and guidance and the regional agencies shall assist with the adoption of revised comprehensive plans, standards and local ordinances by local governments.

**4. Public education program.** The commissioner shall develop a coordinated public education program for school children involving extensive use of the media.

**5. Research.** The commissioner shall encourage internal research focused on the following statewide topics:

- A. Lake vulnerability, particularly as it relates to noncultural features of the watershed;
- B. The effectiveness and design of the best management practices to control phosphorous pollution; and
- C. New lake and watershed diagnostic tools.

#### **§ 480-O. Bulkheads and retaining walls on Scarborough River; permit requirements**

Nothing in this article prohibits the rebuilding, replacement or new construction of a bulkhead, retaining wall or similar structure, provided that the applicant for a permit demonstrates to the department or municipality, as appropriate, that the following conditions are met.

**1. Location.** The bulkhead or similar structure to be constructed, rebuilt or replaced is located along some or all of the north-northeasterly property lines of land abutting the Scarborough River from the jetty to the Scarborough town landing.

**2. Termination.** The terminus of any bulkhead or similar structure, including any wing wall, unless connected to another bulkhead or similar structure, shall terminate at least 25 feet from any abutting property.

Any permit issued under this section for a bulkhead or similar structure which is not connected at both ends to another bulkhead or similar structure shall be subject to only the standard conditions applicable to all permits granted under this article as well as the following conditions. The permit applicant or applicants shall be responsible for reasonably maintaining the bulkhead or similar structure and for repairing damage to the frontal sand dune which occurs between the end of the bulkhead or similar structure and the Scarborough town landing and which is caused by the existence of the bulkhead or similar structure. The applicant or applicants shall submit a report prepared by a state-certified geologist to the commissioner every 2nd year following issuance of the permit or until such time as the commissioner deems the report need not be filed or may be filed at longer intervals. The report shall describe the status of the frontal sand dune between the end of the bulkhead or similar structure and the Scarborough town landing and contain whatever recommendations the geologist determines are reasonably required to maintain the frontal sand dune in that area. The applicant or applicants shall follow the recommendations.

#### **§ 480-P. Special protection for outstanding river segments**

In accordance with Title 12, section 402, outstanding river segments shall include:

**1. Aroostook River.** The Aroostook River from the Canadian border to the Masardis and T.10, R.6, W.E.L.S. town line, excluding the segment in T.9, R.5, W.E.L.S., including its tributaries the Big Machias River from the Aroostook River to the Ashland and Garfield Plantation town line and the St. Croix Stream from the Aroostook River in Masardis to the Masardis and T.9, R.5, W.E.L.S. town line;

**2. Carrabassett River.** The Carrabassett River from the Kennebec River to the Carrabassett Valley and Mt. Abram Township town line;

**3. Crooked River.** The Crooked River, including the Songo River, from its inlet into Sebago Lake in Casco to the Waterford and Albany Township town lines;

**4. Dennys River.** The Dennys River from the railroad bridge in Dennysville Station to the outlet of Meddybemps Lake, excluding the western shore in Edmunds Township and No. 14 Plantation;

**5. East Machias River.** The East Machias River, including the Maine River, from the old powerhouse in East Machias to the East Machias and T.18, E.D., B.P.P. town line, from the T. 19, E.D., B.P.P. and Wesley town line to the outlet of Crawford Lake and from the No. 21 Plantation and Alexander town line to the outlet of Pocomoonshine Lake, excluding Hadley Lake, Lower Mud Pond and Upper Mud Pond;

**6. Fish River.** The Fish River from the bridge in Fort Kent Mills to the Fort Kent and Wallagrass Plantation town line, from the T.16, R.6, W.E.L.S. and Eagle Lake town line to the Eagle Lake and Winterville Plantation town line and from the T.14, R.6, W.E.L.S. and Portage Lake town line to the Portage Lake and T.13, R.7, W.E.L.S. town line, excluding Portage Lake;

**7. Kennebago River.** The Kennebago River from its inlet into Cupsuptic Lake to the Rangeley and Lower Cupsuptic Township town line;

**8. Kennebec River.** The Kennebec River from the Route 148 bridge in Madison to the Caratunk and The Forks Plantation town line, excluding the western shore in Concord Township, Pleasant Ridge Plantation and Carrying Place Township and excluding Wyman Lake;

**9. Machias River.** The Machias River from the Route 1 bridge to the Northfield and T.19, M.D., B.P.P. town line, including its tributaries the Old Stream from the Machias River to the northern most crossing of the Wesley and T.31, M.D., B.P.P. town line, excluding the segments in T.25, M.D., B.P.P. and T.31, M.D., B.P.P.;

**10. Mattawamkeag River.** The Mattawamkeag River from the Penobscot River to the Mattawamkeag and Kingman Township town line and from the Reed Plantation and Bancroft town line to the East Branch, including its tributaries the West Branch from the Mattawamkeag River to the Haynesville and T.3, R.3, W.E.L.S. town line and from its inlet into Upper Mattawamkeag Lake in Island Falls to the Hersey and Moro Plantation town line; the East Branch from the Mattawamkeag River to the Haynesville and Forkstown Township town line and from the T.4, R.3, W.E.L.S. and Oakfield town line to the Smyrna and Dudley Township town line; the Fish Stream from the West Branch of the Mattawamkeag River to the Crystal and Patten town line; the Molunkus Stream from the Silver Ridge Township and Benedicta town line to the East Branch Molunkus Stream; the Macwahoc Stream from the Silver Ridge Township and Sherman town line to the outlet of Macwahoc Lake; and the Baskehegan Stream from the Mattawamkeag River to the Danforth and Brookton Township town line, and from the Brookton Township and Topsfield town line to the Topsfield and Kossuth Township town line, excluding Baskehegan Lake and Crooked Brook Flowage;

**11. Narraguagus River.** The Narraguagus River from the ice dam above the railroad bridge in Cherryfield to the Beddington and Devereaux Township town line, excluding Beddington Lake;

**12. Penobscot River.** The Penobscot River from the Bangor Dam in Bangor to the Veazie Dam and its tributary the East Branch of the Penobscot from the Penobscot River to the East Millinocket and Grindstone Township town line;

**13. Piscataquis River.** The Piscataquis River from the Penobscot River to the Monson and Blanchard Plantation town line, including its tributaries the East and West Branches of the Piscataquis River from the Blanchard Plantation and Shirley town line to the Shirley and Little Squaw Township town line; the Seboeis Stream from its confluence with the Piscataquis River in Howland to the Howland and Mattamiscontis Township town line and from the Mattamiscontis and Maxfield town line to the Maxfield and Seboeis Plantation town line, excluding Shirley Pond and West Shirley Bog;

**14. Pleasant River.** The Pleasant River from the dam in Columbia Falls, formerly the Hathaway Dam, to the Columbia and T.18, M.D., B.P.P. town line and from the T.24, M.D., B.P.P. and Beddington town line to the outlet of Pleasant River Lake in Beddington;

**15. Rapid River.** The Rapid River from the Magalloway Plantation and Upton town line to the outlet of Pond in the River;

**16. Saco River.** The Saco River from the Little Ossipee River to the New Hampshire border;

**17. St. Croix River.** The St. Croix River from the cotton mill dam in Milltown to the Calais and Baring Plantation town line, from the Baring Plantation and Baileyville town line to the Baileyville and Fowler Township town line and from the Lambert Lake Township and Vanceboro town line to the outlet of Spednik Lake, excluding Woodland Lake and Grand Falls Flowage;

**18. St. George River.** The St. George River from the Route 90 bridge in Warren to the outlet of Lake St. George in Liberty, excluding White Oak Pond, Seven Tree Pond, Round Pond, Sennebec Pond, Trues Pond, Stevens Pond and Little Pond;

**19. St. John River.** The St. John River from the Hamlin Plantation and Van Buren town line to the Fort Kent and St. John Plantation town line and from the St. John Plantation and St. Francis town line to the Allagash and St. Francis town line;

**20. Sandy River.** The Sandy River from the Kennebec River to the Madrid and Township E town line;

**21. Sheepscot River.** The Sheepscot River from the Head Tide Dam in Alna to the Halldale Road in Montville, excluding Long Pond and Sheepscot Pond, including its tributary the West Branch of the Sheepscot River from its confluence with the Sheepscot River in Whitefield to the outlet of Branch Pond in China;

**22. West Branch Pleasant River.** The West Branch Pleasant River from the East Branch to the Brownville and Williamsburg Township town line; and

**23. West Branch Union River.** The West Branch Union River from the Route 181 bridge in Mariaville to the outlet of Great Pond in the Town of Great Pond.

For the purpose of receiving a permit for a transmission line or a pipeline under this article, outstanding river segments also include any other outstanding river and stream segments described in Title 12, section 403.

#### **§ 480-Q. Activities for which a permit is not required**

A permit is not required for the following activities if the activity takes place solely in the area specified below:

**1. Water lines and utility cables.** In an area which affects a great pond, the placement of water lines to serve a single-family house or the installation of cables for utilities, such as telephone and power cables, provided that the:

- A. Excavated trench for access to the water is backfilled and riprapped to prevent erosion;
- B. Excavated trench on the landward side of the riprapped area is seeded and mulched to prevent erosion; and
- C. Bureau of Parks and Lands has approved the placement of the cable across the bottom of the great pond to the extent that it has jurisdiction;

**2. Maintenance and repair.** Maintenance and repair of a structure in, on, over or adjacent to a protected natural resource and maintenance and repair of a private crossing of a river, stream or brook if:

- A. Erosion control measures are taken to prevent sedimentation of the water;
- B. Crossings do not block fish passages in water courses;
- C. There is no additional intrusion into the protected natural resource; and
- D. The dimensions of the repaired structure do not exceed the dimensions of the structure as it existed 24 months prior to the repair, or if the structure has been officially included in or is considered by the Maine Historical Preservation Commission eligible for listing in the National Register of Historic Places, the dimensions of the repaired structure do not exceed the dimensions of the historic structure.

This subsection does not apply to: the repair of more than 50% of a structure located in a coastal sand dune system; the repair of more than 50% of a dam, unless that repair has been approved by a representative of the United States Natural Resources Conservation Service; or the repair of more

than 50% of any other structure, unless the municipality in which the proposed activity is located requires a permit for the activity through an ordinance adopted pursuant to the mandatory shoreland zoning laws and the application for a permit is approved by the municipality;

**2-A. Existing road culverts.** In any protected natural resource area, a permit is not required for the repair and maintenance of an existing road culvert or for the replacement of an existing culvert, as long as the replacement culvert is:

- A. Repealed. Laws 1993, ch. 315, § 2.<sup>4</sup>
- B. Not more than 25% longer than the culvert being replaced; and
- C. Not longer than 75 feet.

Ancillary culverting activities, including excavation and filling, are included in this exemption. A person repairing, replacing or maintaining an existing culvert under this subsection shall ensure that erosion control measures are taken to prevent sedimentation of the water and that the crossing does not block fish passage in the water course.

**2-B. Floating docks.** Replacement of a floating dock with another floating dock if the dimensions of the replacement dock do not exceed those of the dock being replaced and the configuration of the replacement dock is the same as the dock being replaced. In any action brought by the department against a person claiming an exemption under this subsection, the burden is on that person to demonstrate that the replacement dock satisfies the requirements of this subsection;

**3. Peat mining.** Repealed. Laws 1995, ch. 700, § 1.<sup>5</sup>

**4. Interstate pipelines.** Alteration of freshwater wetlands associated with the construction, operation, maintenance or repair of an interstate pipeline, subject to article 6, where applicable;

**5. Gold panning.** Notwithstanding section 480-C, a permit shall not be required for panning gold, provided that stream banks are not disturbed and no unlicensed discharge is created;

**6. Agricultural activities.** Subject to other provisions of this article that govern other protected natural resources, altering a freshwater wetland for the purpose of normal farming activities such as clearing of vegetation for agricultural purposes if the land topography is not altered, plowing, seeding, cultivating, minor drainage and harvesting, construction or maintenance of farm or livestock ponds or irrigation ditches, maintenance of drainage ditches and construction or maintenance of farm roads;<sup>6</sup>

**7. Forestry.** Repealed. Laws 1989, c. 838, § 5.

**7-A. Forestry.** Forest management activities, including associated road construction or maintenance, in or adjacent to an existing forested wetland or a harvested forested wetland or adjacent to a protected natural resource pursuant to section 480-C, subsection 1, paragraphs A and B, as long as:

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<sup>4</sup>Repeal effective October 13, 1993. The repealed text read: "Not more than one standard culvert size wider in diameter than the culvert being replaced;...".

<sup>5</sup>Repeal effective effective July 4, 1996. A transition provision was also enacted. It read: "**Transition provisions.** A peat mine licensed pursuant to the Maine Revised Statutes, Title 38, chapter 13, subchapter I, article 6 prior to the effective date of this Act is also considered licensed pursuant to Title 38, chapter 3, subchapter I, article 5-A, as of the effective date of this Act." Laws 1995, ch. 700, § 1 (effective July 4, 1996).

<sup>6</sup>This provision was rewritten by Laws 1995, ch. 460, § 5 and affected by an application provision reprinted in footnote 9.

A. The activity results in a forest stand that meets the minimum stocking requirements in rules adopted pursuant to Title 12, section 8869. This requirement takes effect when those rules are adopted;

B. The activity meets permit-by-rule standards in rules adopted pursuant to this article for any road crossing of a river, stream or brook or for any soil disturbance adjacent to a protected natural resource pursuant to section 480-C, subsection 1, paragraphs A and B and the commissioner is notified before the forest management activity commences;

C. The protected natural resource is not mapped as a significant wildlife habitat under section 480-I; and

D. Any road construction is not used to access development but is used primarily for forest management activities, unless the road is removed and the site restored to its prior natural condition. Roads must be the minimum feasible width and total length consistent with forest management activities. This exemption does not apply to roads that provide access to development in a subdivision as defined in Title 30-A, section 4401, subsection 4, for the organized portions of the State, or Title 12, section 682, subsection 2-A, including divisions of land exempted by Title 12, section 682-B, for portions of the State under the jurisdiction of the Maine Land Use Regulation Commission;

**8. Hydropower projects.** Hydropower projects are exempt from the provisions of this article to the extent provided in section 634. Alteration of a freshwater wetland associated with the operation of a hydropower project, as defined in section 632, is exempt from the provisions of this article, but is subject to chapter 5, subchapter I, article 1, subarticle 1-B, where applicable;

**9. Public works.** A permit is not required for emergency repair or normal maintenance and repair of existing public works which affect any protected natural resource. An activity which is exempt under this subsection shall employ erosion control measures to prevent sedimentation of any surface water, shall not block fish passage in any water course and shall not result in any additional intrusion of the public works into the protected natural resource. This exemption does not apply to any activity on an outstanding river segment as listed in section 480-P;

**10. Aquaculture.** Aquaculture activities regulated by the Department of Marine Resources under Title 12, section 6072. Ancillary activities, including, but not limited to, building or altering docks or filling of wetlands, are not exempt from the provisions of this article;

**11. Soil evaluation.** Borings taken to evaluate soil conditions in or adjacent to a great pond, river, stream or brook, coastal wetland, freshwater wetland or sand dune are exempt from the provisions of this article provided that no area of wetland vegetation is destroyed or permanently removed;

**12. Existing access ways.** Normal maintenance and repair or reconstruction of existing access ways in freshwater or coastal wetlands to residential dwellings as long as:

A. The applicant shows evidence that the access way in disrepair is the existing route of access to the residential dwelling;

B. Erosion control measures are used;

C. Intrusion of the access way into the freshwater or coastal wetland is minimized and allows for proper drainage where necessary;

D. The access way, if in a coastal wetland, is traditionally dry at mean high tide; and

E. A notice of intent to maintain, repair or reconstruct the access way and the description of the work to be completed are submitted to the commissioner and to the municipal reviewing authority at least 20 days before the work is performed; and



**13. Moorings.** The placement of a mooring in any area regulated by this article.

**14. Lawful harvesting of marine organisms or vegetation in coastal wetlands.** A person lawfully engaged in the harvesting of marine organisms or vegetation under the provisions of Title 12, chapter 605 is not required to obtain a permit to engage in those activities in a coastal wetland. Within a coastal wetland, the removal of vegetation or displacement of soil associated with or authorized by those lawful activities is not a violation of this article; and

**15. Subsurface wastewater disposal systems.**

**15-A. Subsurface wastewater disposal systems.** Installation, removal or repair of a subsurface wastewater disposal system, as long as the system complies with all requirements of the subsurface wastewater disposal rules adopted by the Department of Health and Human Services under Title 22, section 42, subsection 3. This subsection takes effect on March 1, 1995.

**16. Alterations in back dunes of coastal sand dune systems.** Repealed<sup>7</sup>

**17. Minor alterations in freshwater wetlands.** Activities that alter less than 4,300 square feet of freshwater wetlands, as long as:

- A. The activity does not occur in, on or over another protected natural resource;
- B. A 25-foot setback from other protected natural resources is maintained and erosion control measures are used;
- C. The activity is not located in a shoreland zone regulated by a municipality pursuant to chapter 3, subchapter I, article 2-B or in the wetland or water body protected by the shoreland zone;
- D. The activity does not occur in a wetland normally consisting of or containing at least 20,000 square feet of open water, aquatic vegetation or emergent marsh vegetation, except for artificial ponds or impoundments;
- E. The activity does not take place in a wetland containing or consisting of peat land dominated by shrubs, sedges and sphagnum moss;
- F. The entire activity constitutes a single, complete project; and
- G. The activity does not occur in a significant wildlife habitat.

An activity does not qualify for exemption under this subsection if that activity is part of a larger project, including a multiphase development, that does not qualify as a whole project. Activities authorized or legally conducted prior to September 29, 1995 may not be considered in calculating the size of the alteration.

**18. Service drops for telephone or electrical service.** Vegetative clearing of a freshwater wetland for the installation of telephone or electrical service, if:

- A. The line extension does not cross or run beneath a coastal wetland, river, stream or brook;
- B. The placement of wires or installation of utility poles is located entirely upon the premises of the customer requesting service, upon a roadway right-of-way or, in the case of telephone service, on existing utility poles; and
- C. The total length of the extension is less than 1,000 feet.

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<sup>7</sup>Repealed February 15, 1995 pursuant to terms of subsection.

**19. Displacement or bulldozing of sediment within a lobster pound.** Displacement or bulldozing of sediment within a lobster pound, provided the sediment is not removed from the area inundated as a result of the impoundment.

**20. Constructed ponds.** Alteration of legally created constructed ponds that are not considered part of a great pond, coastal wetland, river, stream or brook, as long as the constructed pond is not expanded beyond its original size.

**21. Removal of beaver dams.** Removal of a beaver dam as authorized by a game warden, as long as:

- A. Efforts are made to minimize erosion of soil and fill material from disturbed areas into a protected natural resource;
- B. Efforts are made to minimize alteration of undisturbed portions of a wetland or water body; and
- C. Wheeled or tracked equipment is operated in the water only for the purpose of crossing a water body to facilitate removal of the beaver dam. Where practicable, wheeled or tracked equipment may cross a water body only on a rock, gravel or ledge bottom.

This exemption includes the draining of a freshwater wetland resulting from removal of a beaver dam. It does not include removal of a beaver house.

**22. Archaeological excavation.** Archaeological excavation adjacent to a great pond, freshwater wetland, coastal wetland, sand dune system, river, stream or brook as long as the excavation is conducted by an archaeologist listed on the Maine Historic Preservation Commission level 1 or level 2 approved list and unreasonable erosion and sedimentation is prevented by means of adequate and timely temporary and permanent stabilization measures.

**23. Cutting or clearing subject to mandatory shoreland zoning laws.** Cutting or clearing of upland vegetation adjacent to those protected natural resources listed in section 480-C, subsection 1, paragraph A or B for a purpose other than forest management as long as:

A. The cutting or clearing is subject to the jurisdiction of a municipality pursuant to chapter 3, subchapter 1, article 2-B; or

B. If the cutting or clearing is not subject to the jurisdiction of a municipality pursuant to chapter 3, subchapter 1, article 2-B, vegetation within the adjacent area is maintained as follows:

(1) There is no cleared opening greater than 250 square feet in the forest canopy as measured from the outer limits of the tree crown, except that a footpath may be established for the purpose of access to water if it does not exceed 6 feet in width as measured between tree trunks and has at least one bend in its path to divert channelized runoff;

(2) Any selective cutting of trees within the buffer strip leaves a well-distributed stand of trees and other natural vegetation.

(a) For the purposes of this subparagraph, a "well-distributed stand of trees" is defined as maintaining a rating score of 16 or more points in a 25-foot by 50-foot rectangular area as determined by the following rating system.

(i) A tree with a diameter at 4 1/2 feet above ground level of 2.0 to less than 4.0 inches has a point value of one.

(ii) A tree with a diameter at 4 1/2 feet above ground level of 4.0 inches to less than 8.0 inches has a point value of 2.

(iii) A tree with a diameter at 4 1/2 feet above ground level of 8.0 inches to less than 12.0 inches has a point value of 4.

(iv) A tree with a diameter at 4 1/2 feet above ground level of 12.0 or more inches or more has a point value of 8.

(b) In applying this point system:

(i) The 25-foot by 50-foot rectangular plots must be established where the landowner or lessee proposes clearing within the required buffer;

(ii) Each successive plot must be adjacent to, but may not overlap, a previous plot;

(iii) Any plot not containing the required points may have no vegetation removed except as otherwise allowed by this subsection;

(iv) Any plot containing the required points may have vegetation removed down to the minimum points required or as otherwise allowed by this subsection; and

(v) Where conditions permit, no more than 50% of the points on any 25-foot by 50-foot rectangular area may consist of trees greater than 12 inches in diameter.

(c) For the purposes of this subparagraph, "other natural vegetation" is defined as retaining existing vegetation under 3 feet in height and other ground cover and retaining at least 5 saplings less than 2 inches in diameter at 4 1/2 feet above ground level for each 25-foot by 50-foot rectangular area. If 5 saplings do not exist, the landowner or lessee may not remove any woody stems less than 2 inches in diameter until 5 saplings have been recruited into the plot;

(3) In addition to the requirements of subparagraph (2), no more than 40% of the total volume of trees 4.0 inches or more in diameter, measured 4 1/2 feet above ground level, is selectively cut in any 10-year period;

(4) Deleted.

(5) Tree branches are not pruned except on the bottom 1/3 of the tree as long as tree vitality will not be adversely affected; and

(6) In order to maintain a buffer strip of vegetation, when the removal of storm-damaged, diseased, unsafe or dead trees results in the creation of cleared openings in excess of 250 square feet, these openings are replanted with native tree species unless there is existing new tree growth.

Cleared openings legally in existence on September 1, 2002 may be maintained but may not be enlarged.

This subsection applies to an area with vegetation composed primarily of shrubs, trees or other woody vegetation without regard to whether the area was previously cut or cleared;

**24. Existing lawns and gardens.** Maintenance, but not enlargement, of lawns and gardens in existence on September 1, 2002 that are adjacent to a river, stream or brook not regulated by a municipality under chapter 3, subchapter I, article 2-B;

**25. Existing agricultural fields and pastures.** Maintenance, but not enlargement, of agricultural fields and pastures in existence on September 1, 2002 that are adjacent to a river, stream or brook not regulated by a municipality under chapter 3, subchapter 1, article 2-B; and

**26. Overboard wastewater system.** Installation, maintenance or removal of a licensed overboard discharge treatment system, including the outfall pipe, if:

- A. Erosion control measures are taken to prevent sedimentation of the water;
- B. Effects of construction activity on the protected natural resource are minimized; and
- C. The activity is approved by the department as provided in the department's rules concerning overboard discharges adopted pursuant to section 414-A.

#### **§ 480-R. Violations; enforcement**

**1. Violations.** A violation is any activity which takes place contrary to the provisions of a valid permit issued under this article or without a permit having been issued for that activity. Each day of a violation shall be considered a separate offense. A finding that any such violation has occurred shall be prima facie evidence that the activity was performed or caused to be performed by the owner of the property where the violation occurred.

**2. Enforcement.** In addition to department staff, inland fisheries and wildlife game wardens, Department of Marine Resources marine patrol officers and all other law enforcement officers enumerated in Title 12, section 10401, shall enforce the terms of this article.

#### **§ 480-S. Fee for significant wildlife habitat review**

The commissioner shall establish procedures to charge applicants for costs incurred in reviewing license and permit applications regarding significant wildlife habitats in the same manner as provided for other fees in section 352. The maximum fees are \$150 for processing and \$50 for a license. All fees must be credited to the Maine Environmental Protection Fund established in section 351.

#### **§ 480-T. Transportation improvements**

Prior to February 15, 1991, an individual permit is not required by this article for maintenance or repair of public transportation facilities or structures, or transportation reconstruction or replacement projects that are under the direction and supervision of the Department of Transportation that do not affect a coastal wetland or coastal sand dune system.

**1. Requirements.** The commissioner and the Commissioner of Transportation shall enter into a memorandum of understanding for projects to be undertaken in accordance with this section. In

addition, the Department of Transportation shall meet the following conditions for any project undertaken pursuant to this section.

- A. All projects must be performed in a manner consistent with this article and in compliance with rules adopted by the board.
- B. The project may not unreasonably harm the protected natural resources covered by this article.
- C. The Department of Transportation and their contractors use erosion control measures to prevent sedimentation of any surface waters.
- D. The project may not block any fish passage in any watercourse.
- E. The project may not result in any excessive intrusion of the project into the protected natural resources.

**2. Exempt activities.** Those activities that are exempt from permitting requirements under section 480-Q are not subject to this section.

**3. Notification.** The Department of Transportation must notify the department prior to beginning the construction of any projects undertaken that meet the requirements of this section.

**4. Repeal.** This section is repealed on February 15, 1991, except that reconstruction or replacement projects that have been advertised prior to that date continue to be subject to this section.

#### **§ 480-U. Cranberry cultivation**

**1. General permit.** An individual permit is not required for the alteration of freshwater wetlands to cultivate cranberries as long as the provisions of this section are met.

**2. Requirements.** An application must be filed with the department and must meet the following requirements.

A. The application must contain written certification by a knowledgeable professional that the cranberry cultivation project will not be located in a wetland that has one or more of the following characteristics:

- (1) Is a coastal wetland or is located within 250 feet of a coastal wetland;
- (2) Is a great pond;
- (3) Contains endangered or threatened plant species as defined in Title 12, section 544;
- (4) Contains any type of palustrine natural community of which there are 20 or fewer occurrences in the State;
- (5) Contains any of the following resources:
  - (a) Habitat for species appearing on the official state or federal lists of endangered or threatened species when there is evidence that the species is present;
  - (b) As defined by rule by the Commissioner of Inland Fisheries and Wildlife, whether or not the resource has been mapped, high-value and moderate-value deer wintering areas; deer travel corridors; high-value and moderate-value waterfowl or wading bird habitats, including nesting and feeding areas; shorebird nesting, feeding or staging areas; or seabird nesting islands; or
  - (c) Critical spawning and nesting areas for Atlantic salmon as defined by rule by the Atlantic Salmon Commission whether or not mapped;

(6) Is located within 250 feet of the normal high water line and within the same watershed of any lake or pond classified as GPA under section 465-A;

(7) Is a bog dominated by ericaceous shrubs, sedges and sphagnum moss and usually having a saturated water regime, except that applications proposing reclamation of previously mined peat bogs may be considered;

(8) Is land adjacent to the main stem of a major river, as classified in section 467, that is inundated with floodwater during a 100-year flood event and that under normal circumstances supports a prevalence of wetland vegetation, typically adapted for life in saturated soils; or

(9) Contains at least 20,000 square feet of aquatic vegetation, emergent marsh vegetation or open water, except for artificial ponds or impoundments, during most of the growing season in most years; except that cranberry cultivation is allowed more than 250 feet from the edge of the area of aquatic vegetation, emergent marsh vegetation or open water.

A project to cultivate indigenous cranberries may be located in wetlands described in subparagraphs (6) and (7) only if the project location is a natural cranberry bog and provisions of paragraph D are met. For purposes of this paragraph, "natural cranberry bog" means an area with indigenous large cranberries, *Vaccinium macrocarpon* Ait., comprising more than 50% of the cover in the herbaceous layer; and "cover in the herbaceous layer" means all herbaceous or woody vegetation less than 10 inches in height. [1999, c. 401, Pt. BB, §18 (amd).]

B. The application must contain a plan that includes the following elements:

(1) A top view drawing of the entire project including existing and proposed beds, dikes, ditches, roads and reservoirs; cross-sectional drawings of beds, dams, dikes and ditches; length, width and depth of beds, dikes and ditches; delineation of the wetland boundaries and calculated area of wetlands affected; description of existing vegetation; amount and type of fill material to be discharged over the beds and location of borrow area; type and size of water control structures; and placement and description of water sources;

(2) A soil erosion and sedimentation control plan that is consistent with erosion and sediment control specifications as determined by the Department of Agriculture, Food and Rural Resources and the department;

(3) A plan for a water recovery system, including either a reservoir or the cranberry beds themselves, that is designed to contain the runoff from the project area during a 10-year, 24-hour storm event;

(4) A plan to maintain a 75-foot buffer strip from any river or stream draining a watershed of 100 acres or more, except that excavated ditches and water intake and outfall pipes or control structures may be allowed in the 75-foot buffer area;

(5) Design specifications for water intake and outfall pipes and excavated ditches which must be consistent with specifications as determined by the Department of Agriculture, Food and Rural Resources and the department;

(6) A plan to maintain minimum base flows for each water supply area. Minimum base flow is the aquatic base flow for that watershed, or a flow that can be shown to protect designated uses and characteristics assigned in section 465; and

(7) Appurtenant facilities, including, but not limited to storage buildings, parking areas and processing areas, may not be located in the freshwater wetland. This limitation does

not apply to pump houses, roadways, service areas and other appurtenant facilities directly related and needed to carry out the water related activities.

C. The applicant must provide a management plan that includes a pesticide and fertilizer program approved by the Department of Agriculture, Food and Rural Resources. The plan must include the following practices:

- (1) The application of nutrients and soil amendments in terms of timeliness, amounts, materials and method of application;
- (2) The use of current integrated pest management practices for applying pesticides properly and in the minimum amounts necessary to control pests; and
- (3) The management of water in terms of bed drainage, runoff disposal, sprinkler irrigation, control devices to separate natural water from pumping supply for irrigation purposes, back-siphoning prevention devices and flooding.

D. A person applying for approval on the basis that the project location is a natural cranberry bog as defined in paragraph A must provide a management plan that meets all of the requirements of paragraph C and the requirements of this paragraph.

- (1) The cranberries must be cultivated in accordance with organic production standards established in Title 7, section 551, subsection 2 and section 553, subsection 1, paragraph A.
- (2) A person may not introduce nonindigenous cranberry plants to the project site. A person may not remove cranberry plants existing on the project site.
- (3) Cultivation practices may not alter natural drainage. Filling is limited to placement each year of up to one inch of sand on bearing cranberry vines.

**3. Agriculture certification.** The Department of Agriculture, Food and Rural Resources shall review all plans submitted pursuant to subsection 2, paragraphs B, C or D and shall certify compliance of these sections to the department within 20 days of receipt of an application.

**4. Review period.** Work may not occur until 45 days after the department has accepted an application for processing. This period may be extended pursuant to section 344-B with the consent of the applicant.

**5. Notification.** The department shall notify an applicant in writing within 45 days of acceptance for processing if the department determines that the requirements of this section have not been met. Any such notification must specifically cite the requirements of this section that have not been met. If the department has not notified the applicant under this subsection within the specified time period, a general permit is deemed to have been granted.

**6. Deferrals.** The 45-day time limit for processing a completed application under subsection 5 does not apply when winter conditions prevent the department from evaluating a permit application. Under such circumstances, the department may defer action for a reasonable period. The department shall immediately notify the applicant of a deferral under this subsection.

**7. Fees.** The department shall assess a fee for review of applications filed pursuant to this section. The fee must be equivalent to the amount assessed to activities requiring an individual permit for freshwater wetland alterations.

**8. Violation.** Any action taken by a person receiving a general permit under this section that is not in compliance with the plans submitted under subsection 2, paragraphs B, C or D is a violation of the general permit.

#### **§ 480-V. Applicability**

Except as provided in this section, this article applies to all protected natural resources in the State, including significant wildlife habitat that is within another protected natural resource.

**1. Exemptions.** This article does not apply to:

- A. Significant wildlife habitat not within another protected natural resource, unless that significant wildlife habitat is identified on a map adopted by the board.

#### **§ 480-W. Emergency actions to protect threatened property**

**1. Protective materials.** Deleted. Laws 2005, ch. 548, § 2.

**2. Strengthening of structure.** Deleted. Laws 2005, ch. 548, § 2.

**3. Emergency action exemption.** Notwithstanding section 480-C, if the local code enforcement officer, a state-licensed professional engineer or a state-certified geologist determines that the integrity of a seawall, bulkhead, retaining wall or similar structure -certified geologist fails to determine within 6 hours of initial contact by the property owner whether the integrity of a structure is destroyed or threatened, the property in a coastal sand dune system is destroyed or threatened, the owner of property protected by the seawall, bulkhead, retaining wall or similar structure may perform or cause to be performed the following activities without obtaining a permit under this article:

A. Place riprap, sandbags or other heavy nonhazardous material to shore up the threatened structure and leave the material in place until a project designed to repair or replace the structure is permitted by the department. After such emergency action is taken and within 5 working days after the imminent threat, the property owner must provide written notice to the department of the date the emergency action was taken and a description of the emergency action taken. Within 6 months following placement of any material pursuant to this paragraph, the property owner must submit to the department an application to repair or replace the structure. The material placed pursuant to this paragraph must be removed within 18 months from the date a permit is issued by the department; or

B. Make permanent repairs, to the extent necessary to alleviate the threat, to strengthen the seawall, bulkhead, retaining wall or other structure, to widen the footings or to secure the structure to the sand with tie-back anchors. A state-certified geologist, state-licensed professional engineer or other qualified professional must make the determination that the actions taken by the property owner in accordance with this section are only those actions necessary to alleviate the imminent threat and do not include increasing the height or length of the structure.

If a local code enforcement officer, state-licensed professional engineer or stateowner may proceed as if the local code enforcement officer, state-licensed professional engineer or state-certified geologist had determined that the integrity of the structure was destroyed or threatened.

**4. Replacement after emergency action under permit by rule.** Notwithstanding any other provision of this chapter, the department shall approve a permit by rule to repair or replace a seawall, bulkhead, retaining wall or similar structure that has been destroyed or threatened with a structure that is identical in all dimensions and location as long as a property owner files a completed permit-by-rule notification for the repair or replacement of the structure and the following standards are met:



A. During project construction, disturbance of dune vegetation must be avoided and native vegetation must be retained on the lot to the maximum extent possible. Any areas of dune vegetation that are disturbed must be restored as quickly as possible. Dune vegetation includes, but is not limited to, American beach grass, rugosa rose, bayberry, beach pea, beach heather and pitch pine.

B. Sand may not be moved seaward of the frontal dune between April 1st and September 1st unless the owner has obtained written approval from the Department of Inland Fisheries and Wildlife.

C. The replacement of a seawall may not increase the height, length or thickness of the seawall beyond that which legally existed within the 24 months prior to the submission of the permit-by-rule notification. The replaced seawall may not be significantly different in construction from the one that previously existed.

#### **§ 480-X. Alterations of freshwater wetlands<sup>8</sup>**

An application for a permit to undertake activities altering freshwater wetlands must be processed by the department using the review process described in this section.

**1. Application.** This section does not apply to activities otherwise qualifying for reduced review procedures, such as permits by rule or general permits; activities exempt from review under another section of this article; or activities involving protected natural resources other than freshwater wetlands, such as great ponds, coastal wetlands and rivers, streams or brooks.

**2. Three-tiered review process; tiers defined.** Except as provided in subsection 1, an application for a permit to undertake activities altering freshwater wetlands must be reviewed in accordance with the following.

A. A Tier 1 review process applies to any activity that involves a freshwater wetland alteration up to 15,000 square feet and does not involve the alteration of freshwater wetlands listed in subsection 4.

B. A Tier 2 review process applies to any activity that involves a freshwater wetland alteration of 15,000 square feet up to one acre and does not involve the alteration of freshwater wetlands listed in subsection 4 or 5.

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<sup>8</sup>This section as originally enacted, and other provisions enacted by Laws 1995, ch. 460, are affected by an application provision which reads:

"This Act:

1. Does not apply to an activity that occurred prior to the effective date of this Act and for which a permit was required under the Maine Revised Statutes, Title 38, chapter 3, subchapter I, article 5-A prior to the effective date of this Act;

2. Does not apply to an activity for which a permit was not required under the Maine Revised Statutes, Title 38, chapter 3, subchapter I, article 5-A prior to the effective date of this Act, but is required if the activity began prior to the effective date of this Act; and

3. With the exception of those sections of this Act that amend the Maine Revised Statutes, Title 38, section 480-Q, subsection 6 and enact Title 38, section 480-Q, subsection 17, does not apply to an activity performed or caused to be performed on or after the effective date of this Act if the person performing the activity, or causing the activity to be performed, was in possession of applicable federal, state or local licenses prior to the effective date of this Act."

Laws 1995, ch. 460, §12 (effective September 29, 1995).

The Department is also required to monitor the effectiveness of the regulatory program established by 38 M.R.S.A. § 480-X and report back to the Legislature. See Laws 1995, § 10.

- C. A Tier 3 review process applies to any activity that involves a freshwater wetland alteration of one acre or more or an alteration of a freshwater wetland listed in subsection 4 or 5.

If the project as a whole requires Tier 2 or Tier 3 review, then any activity that is part of the overall project and involves a regulated freshwater wetland alteration also requires the same higher level of review, unless otherwise authorized by the department.

In determining the amount of freshwater wetland to be altered, all components of a project, including all phases of a multiphased project, are treated together as constituting one single and complete project. Activity authorized or legally conducted prior to the effective date of this section is not included.

The standards of section 480-D do not apply to projects that qualify for Tier 1 review, except that habitat standards under section 480-D, subsection 3 and water quality standards under section 480-D, subsection 5 apply to those projects. Projects that meet the eligibility requirements for Tier 1 review and that satisfy the permitting requirements set forth in subsection 3 and 6, as applicable, are presumed not to have significant environmental impact.

**3. General requirements.** A person undertaking an activity for which a permit is processed pursuant to this section must satisfy the requirements of this subsection.

- A. An applicant for Tier 1, Tier 2 or Tier 3 review shall meet the following requirements.
- (1) Alteration of freshwater wetland areas on the property must be avoided to the extent feasible considering cost, existing technology and logistics based on the overall purpose of the project.
  - (2) The area of the freshwater wetland to be altered must be limited to the minimum amount necessary to complete the project.
- B. Deleted.
- C. An applicant for Tier 1 review shall meet the following requirements.
- (1) Erosion control measures must be used to prevent sedimentation of protected natural resources. A 25-foot buffer strip must be maintained between the activity and any river, stream or brook.
  - (2) The activity must comply with applicable water quality standards pursuant to section 480-D, subsection 5.
- D. An applicant for Tier 2 or Tier 3 review shall comply with the standards contained in section 480-D.

**4. Projects not eligible for Tier 1 or Tier 2 review.** The following activities are not eligible for Tier 1 or Tier 2 review unless the department determines that the activity will not negatively affect the freshwater wetlands and other protected natural resources present:

- A. Activities located within 250 feet of:
- (1) A coastal wetland; or
  - (2) The normal high-water line, and within the same watershed, of any lake or pond classified as GPA under section 465-A;
- B. Activities occurring in freshwater wetlands, other than artificial ponds or impoundments, containing under normal circumstances at least 20,000 square feet of aquatic vegetation, emergent marsh vegetation or open water;

- C. Activities occurring in freshwater wetlands that are inundated with floodwater during a 100-year flood event based on flood insurance maps produced by the Federal Emergency Management Agency or other site-specific information;
- D. Activities occurring in freshwater wetlands containing significant wildlife habitat that has been mapped, identified or defined, as required pursuant to section 480-B, subsection 10, at the time of the filing by the applicant;
- E. Activities occurring in peatlands dominated by shrubs, sedges and sphagnum moss, except that applications proposing work in previously mined peatlands may be considered by the department for Tier 1 or Tier 2 review, as applicable; or
- F. Activities occurring within 25 feet of a river, stream or brook.

The department shall inform the applicant in writing within the review period specified in subsection 6 or 7 if the proposed project does not qualify for Tier 1 or Tier 2 review processing and shall explain permitting options if the applicant wishes to pursue the project. The department is responsible for providing information necessary to establish whether the types of wetlands described in paragraphs D and E will be affected by the proposed activity. Unless the applicant knowingly or willfully provided incomplete or false information to the department, if the department does not notify the applicant that the proposed project does not qualify for Tier 1 or Tier 2 review, the project is deemed to be qualified for Tier 1 or Tier 2 review, as applicable.

**5. Additional projects not eligible for Tier 2 review.** An activity in freshwater wetlands containing a natural community that is imperiled (S2) or critically imperiled (S1), as defined by the Natural Areas Program pursuant to Title 12, section 544 is not eligible for Tier 2 review unless the department determines that the activity will not negatively affect the freshwater wetlands and other protected natural resources present.

**6. Application process for Tier 1 review activities.** Applications for Tier 1 review are governed by this subsection.

A. The application must be sent by certified mail or hand-delivered to the department. The application must include:

- (1) The application fee;
- (2) The project location on a United States Geological Survey map;
- (3) A description of the project, including a drawing showing the area of freshwater wetland to be filled or otherwise altered and areas of any marsh or open water within the freshwater wetland; and
- (4) A signed statement averring that all of the requirements of subsection 3 will be met, that the activity will not occur in a wetland area described in subsection 4 and that a copy of the application has been submitted by the applicant for public display to the municipal office of the municipality in which the project will be located.

B. Work may not occur until 45 days after the department receives a complete application, unless written approval is issued sooner by the department. The department shall notify the applicant in writing no later than 45 days after the department receives a complete application if the applicable requirements of this section have not been met or if the review period may be extended pursuant to section 344-B, subsection 4. If the department has not notified the applicant within the 45-day review period, a permit is deemed to be granted.

C. Fees for Tier 1 review may not exceed the following:

- (1) For projects up to 5,000 square feet, \$35;

(2) For projects from 5,000 square feet up to 10,000 square feet, \$75; and

(3) For projects from 10,000 square feet up to 15,000 square feet, \$150.

**7. Application process for Tier 2 review.** Applications for Tier 2 review are governed by this subsection.

A. An application form must be submitted, with the application fee, to the department and include the following information:

(1) Documentation that public notice has been provided of the proposed project in accordance with department rules;

(2) A United States Geological Survey map showing the project location;

(3) Written certification by a knowledgeable professional experienced in wetland science that the project will not alter, or cause to be altered, a wetland described in subsection 4 or 5;

(4) A top view drawing of the entire project, including existing and proposed fill, excavation, roads and structures; cross-sectional drawings of any fill or excavated areas; delineation of the wetland boundaries and calculated area of freshwater wetlands affected; description of existing vegetation on the project site; identification of any surface water bodies within 100 feet of the proposed alteration; and a drawing of the 25-foot buffer strip between the project and any river, stream or brook;

(5) A soil erosion and sedimentation control plan;

(6) For work in previously mined peatlands, information on the past mining activity, including the approximate dates of the mining activity, the area and depth to which peat has been excavated from the site, any restoration work on the site and the current condition of the site;

(7) A statement describing why the project can not be located completely in upland areas and any alternatives that exist for the project that would either avoid or minimize the amount of proposed freshwater wetland alteration;

(8) A plan for compensating for lost functions and values of the freshwater wetland when required by, and in accordance with, rules adopted by the department;

(9) Any other information determined by the department to be necessary to meet the requirements of section 480-D and rules adopted by the department.

B. Work may not occur until 60 days after the department has received a complete application for processing, unless written approval is issued sooner by the department. The department shall notify the applicant in writing within 60 days of the department's receipt of a complete application whether the applicable requirements of this section have been met or if the review period may be extended pursuant to section 344-B, subsection 4. If the department has not notified the applicant within the 60-day review period, a permit is deemed to be granted.

C. Fees for Tier 2 review must be set in accordance with the department's fee schedule for freshwater wetland alterations under the natural resources protection laws.

**8. Application process for Tier 3 review.** Applications for Tier 3 review are governed by this subsection.

- A. An application form must be submitted to the department that contains all the information required for Tier 2 review, in addition to any information determined by the department to be necessary to meet the requirements of section 480-D and rules adopted by the department.
- B. Written approval from the department is required before work may begin.
- C. Fees for Tier 3 review are set in accordance with the department's fee schedule for freshwater wetland alterations under the natural resources protection laws.

#### **§ 480-Y. Creation of agricultural irrigation ponds**

**1. General permit.** A general permit is required for the alteration of a freshwater, nontidal stream to construct an agricultural irrigation pond. If the provisions of this section are met, an individual permit is not required.

**2. Eligibility criteria.** The following eligibility criteria must be met.

A. The farm must have an irrigation management plan, referred to in this section as the "irrigation plan." The irrigation plan must identify the total number of irrigated acres on the farm or on a specified management unit, the amount of water needed, the potential sources of water for irrigating the field and the water management practices that will be used to ensure that the amount of water used for crop irrigation will be kept to a minimum. For the purposes of this subsection, "farm" has the same meaning as in Title 17, section 2805.

B. The department must have assessed the affected area as having no significant habitat for fish and wildlife. For the purposes of this section, "significant habitat" means the same as "significant wildlife habitat" in section 480-B, subsection 10; a fish spawning or nursery habitat; a habitat required for migration of fish species to or from a spawning or nursery habitat; or a habitat otherwise supporting a moderate to high population of salmonid species as determined by the Department of Inland Fisheries and Wildlife.

C. The pond may not be located in a wetland containing endangered or threatened plant species as determined pursuant to Title 12, section 544-B, subsection 3 or containing a natural community that is imperiled (S2) or critically imperiled (S1) as defined by the Natural Areas Program pursuant to Title 12, section 544.

D. A site assessment must be conducted by the department prior to the submission of an application. The department may defer a site assessment for a reasonable period when winter conditions prevent the department from properly evaluating the affected area.

E. The pond may not be located in a river, stream or brook if the department determines at the site assessment that there is a practicable alternative water supply that would be less damaging to the environment. For purposes of this paragraph, the term "practicable" means feasible considering cost, existing technology and logistics based on the overall purpose of the project.

**3. Standards.** The following standards must be met.

A. The pond, dams and outlets must be designed by a professional engineer to United States Natural Resources Conservation Service standards.

B. Dam fill material must be specified by the professional engineer and must be compacted to 95% of standard proctor. Compaction testing must be conducted with tests performed at a minimum of 2 per dam site or one every 100 feet of dam length, whichever is greater.

C. The pond outlet must be designed to passively discharge a minimum flow equal to inflow or the site-specific aquatic base flow, whichever is less, at all times. The site-specific aquatic

base flow must be that specified by the department following consultation with the Department of Inland Fisheries and Wildlife, the United States Natural Resources Conservation Service and other qualified advisors during the site assessment.

D. The pond outlet must be designed and maintained to ensure a cold water release by using a method such as a bottom draw and to induce dissolved oxygen by using a method such as a riprap slope to increase water turbulence.

E. An erosion control plan must ensure that siltation or sedimentation downstream of the dam site is kept to a minimum, to the fullest extent practical, during construction, operation and maintenance of the irrigation pond.

F. The landowner shall maintain a permanently vegetated buffer strip that consists of field grasses or woody vegetation 25 feet wide around the pond except where slopes are equal to or greater than 20%, in which case the buffer strip must be 75 feet wide. Unless recommended to be thinned or mowed on an annual basis by the department or the United States Natural Resources Conservation Service, buffer strip vegetation may not be cut. An access road and irrigation pipes may cross through the buffer strip.

G. All instream construction activities must be conducted between July 15th and October 1st of the same year unless the department determines in the site assessment that an earlier start date will not cause a significant adverse impact to fish and wildlife resources.

**4. Submissions.** The following provisions apply to the submission of applications.

A. An application must be filed with the department and must include the following:

- (1) The application cover sheet, as provided by the department;
- (2) The United States Geological Survey topographical map with the boundaries of the farm and the pond site clearly marked;
- (3) A photograph of the stream at the proposed dam site;
- (4) A copy of the irrigation plan for the farm;
- (5) Site plans showing existing and proposed topography, stream channel location, existing wetland boundaries, maximum pool elevation, normal pool elevation, dam footprints, outlet location, emergency spillway location, access roads, stockpile locations and buffer strips;
- (6) Cross sections through the dam and outlet structure, including proposed maximum pool elevation and normal pool elevation;
- (7) A plan to maintain minimum flow downstream, including any calculations used to create the plan;
- (8) A complete erosion control plan using practices contained in the "Maine Erosion and Sediment Control Handbook for Construction: Best Management Practices" (1991) unless otherwise approved or required by the department. The erosion control plan must include a narrative with a sequence for implementing the plan, provisions to inspect and maintain erosion controls and a site plan showing locations of control measures. The plan must include provisions for maintaining a dry construction site. These provisions may consist of construction during a no-flow period, a temporary cofferdam or a stream diversion. The erosion control plan must also include provisions for dewatering and disposal of dredged and excavated soil material. The disposal of soil material dredged from the stream must comply with the requirements of the State's solid waste management rules;

(9) Test pit logs and test results from a minimum of 2 test pits dug in the footprint of the dam and results of tests done under the direction of a professional engineer on the dam fill material; and

(10) A copy of the property deed, lease, purchase and sale agreement or other legal document establishing that the applicant has title or right to or interest in the property proposed for pond development.

All design materials used to show that the dam design meets the standards of the general permit must be signed and stamped by a professional engineer. [1995, c. 659, §1 (new).]

B. Following construction and prior to operation of the irrigation pond, the permittee must submit an inspection report by a professional engineer stating that the professional engineer inspected the dam and that it was constructed in conformance with the standards established in subsection 3. The report must specifically include evidence that the proper number of compaction tests were done and proper compaction specifications have been achieved. The inspection report must include a copy of the job diary and information on when inspections were done and what was inspected.

**5. Review period.** Work may not commence until 30 days after the department has accepted an application for processing. This period may be extended pursuant to section 344-B with the consent of the applicant.

**6. Notification.** The department shall notify the applicant in writing within 30 days of acceptance for processing if the department determines that the requirements of this section have not been met. This notification must specifically cite the requirements of this section that have not been met. If the department has not notified the applicant under this section within the specified time period, a general permit is deemed to have been granted.

**7. Fees.** The department shall assess a fee for review of an application filed pursuant to this section. The fee must be equivalent to the amount assessed for activities requiring an individual permit for stream alterations.

**8. Violation.** A violation occurs when an activity takes place that is not in compliance with the provisions of this section or the plans submitted with the application. Any deviation from the approved plans must receive prior department approval.

#### **§ 480-Z. Compensation**

The department may establish a program providing for compensation of unavoidable freshwater or coastal wetland losses due to a proposed activity. Compensation must include the restoration, enhancement, creation or preservation of wetlands that have functions or values similar to the wetlands impacted by the activity, unless otherwise approved by the department. Preservation may include protection of uplands adjacent to wetlands.

The department may require that compensation include the design, implementation and maintenance of a compensation project or, in lieu of such a project, may allow the applicant to purchase credits from a mitigation bank or to pay a compensation fee. If compensation is required, the completion and maintenance of a project, purchase of credits or payment of a compensation fee must be a condition of the permit.

The department shall identify an appropriate project, or determine the amount of credits or compensation fee, based upon the compensation that would be necessary to restore, enhance, create or preserve wetlands with functions or values similar to the wetlands impacted by the activity. However, the department may allow the applicant to conduct a project of equivalent value, or allow

the purchase of credits or payment of a compensation fee of equivalent value, to be used for the purpose of restoring, enhancing, creating or preserving other wetland functions or values that are environmentally preferable to the functions and values impacted by the activity, as determined by the department. The loss of functions or values of a coastal wetland may not be compensated for by the restoration, enhancement, creation or preservation of freshwater wetland functions or values.

A project undertaken pursuant to this section must be approved by the department. The department shall base its approval of a compensation project on the wetland management priorities identified by the department for the watershed or biophysical region in which the project is located. The department may not approve a compensation project until the applicant has complied with all other applicable provisions of this article and all applicable rules adopted by the department pursuant to this article. For purposes of this section, "biophysical region" means a region with shared characteristics of climate, geology, soils and natural vegetation.

**1. Location of project.** A compensation project must be located on or adjacent to the project site, unless otherwise approved by the department. A compensation project must be located in the same watershed as the wetlands affected by the activity unless the department determines, based on regional hydrological or ecological priorities, that there is a scientific justification for locating the compensation project outside of the same watershed.

**2. Approval of mitigation bank.** A mitigation bank from which any credits are purchased must be approved by the department consistent with all applicable federal rules and regulations.

**3. Compensation fee program.** The department may develop a compensation fee program in consultation with the State Planning Office, the United States Army Corps of Engineers and state and federal resource agencies, including the United States Fish and Wildlife Service and the United States Environmental Protection Agency.

A. The program may include the following:

- (1) Identification of wetland management priorities on a watershed or biophysical region basis;
- (2) Identification of the types of wetland losses eligible for compensation under this subsection;
- (3) Standards for compensation fee projects;
- (4) Calculation of compensation fees based on the functions and values of the affected wetlands and the cost of compensation, taking into account the potential higher cost of compensation when a project is implemented at a later date; and
- (5) Methods to evaluate the long-term effectiveness of compensation fee projects implemented under this subsection in meeting the wetland management priorities identified pursuant to subparagraph (1).

B. Any compensation fee may be paid into a wetlands compensation fund established by the department as provided in subparagraph (1) or to an organization authorized by the department as provided in subparagraph (2). A compensation project funded in whole or in part from compensation fees must be approved by the department.

- (1) The department may establish a wetlands compensation fund for the purpose of receiving compensation fees, grants and other related income. The wetlands compensation fund must be a fund dedicated to payment of costs and related expenses of wetland restoration, enhancement, preservation and creation projects. The department may make payments from the fund consistent with the purpose of the fund. Income received under this subsection must be deposited with the State Treasurer to the credit of



the wetlands compensation fund and may be invested as provided by law. Interest on these investments must be credited to the wetlands compensation fund.

(2) The department may enter into an enforceable, written agreement with a public, quasi-public or municipal organization or a private, nonprofit organization for the protection of wetlands and other natural areas. Such an organization must demonstrate the ability to receive compensation fees, administer a wetlands compensation fund and ensure that compensation projects are implemented consistent with local, regional or state wetland management priorities for the watershed in which the project is located. If compensation fees are provided to an authorized organization, the organization shall maintain records of expenditures and provide an annual summary report as requested by the department. If the authorized agency is a state agency other than the department, the agency shall establish a fund meeting the requirements specified in subparagraph (1). If the organization does not perform in accordance with this subsection or with the requirements of the written agreement, the department may revoke the organization's authority to conduct activities in accordance with this subsection.

Rules adopted pursuant to this subsection are routine technical rules under Title 5, chapter 375, subchapter 2-A.

**4. Relationship to other provisions.** The purchase of credits from a mitigation bank or the payment of a compensation fee in no way relieves the applicant of the requirement to comply with any other provision of this article, including, but not limited to, the requirement to avoid or minimize effects on wetlands and water quality to the greatest extent practicable under section 480-X.

#### **§480-AA. Coastal sand dune rules**

Rules adopted by the board regarding development in coastal sand dune systems are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

#### **§480-BB. Significant wildlife habitat; major substantive rules**

The Department of Inland Fisheries and Wildlife shall adopt rules that define "significant vernal pool habitat," "high and moderate value waterfowl and wading bird habitat" and "shorebird nesting, feeding and staging areas" under section 480-B, subsection 10, paragraph B. The Department of Environmental Protection shall adopt rules regarding the criteria used to determine whether an area is significant vernal pool habitat, high and moderate value waterfowl and wading bird habitat or shorebird nesting, feeding and staging areas under section 480-B, subsection 10, paragraph B. The rules, as applicable, must:

- 1. Definition of buffer area.** Include a definition of the buffer area to be regulated;
- 2. Certain landowners not subject to regulation.** Provide that a landowner proposing to cause an impact on the buffer area defined for a significant vernal pool habitat is not subject to regulation pursuant to the rule if the significant vernal pool habitat is not on property owned or controlled by that landowner;
- 3. Department of Environmental Protection must provide written field determination.** Require that the Department of Environmental Protection provide a written field determination upon the request of a landowner whose land may be affected by the definitions and criteria adopted in a rule;

**4. Department of Environmental Protection may not assess fine in certain cases.** Provide that the Department of Environmental Protection may not assess a fine against a landowner who acted in accordance with a written field determination if the fine would be based solely on information in the written field determination; and

**5. Process for voluntary identification.** Include a process for a landowner to voluntarily identify the landowner's land as a significant vernal pool habitat and to provide the Department of Inland Fisheries and Wildlife the authority to map the significant vernal pool habitat.

Rules adopted pursuant to this section are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.<sup>9</sup>

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<sup>9</sup> Section 480-BB was enacted by PL 2005, ch. 116. Section 6 of that chapter provided:  
"Sec. 6. Rules. The major substantive rules adopted pursuant to the Maine Revised Statutes, Title 38, section 480-BB must be submitted to the Legislature by January 3, 2006 for review by the Joint Standing Committee on Natural Resources during the Second Regular Session of the 122nd Legislature. The Joint Standing Committee on Natural Resources is authorized to report out legislation to the Second Regular Session of the 122nd Legislature regarding significant wildlife habitat."

*Recent Unallocated Law Provisions of Interest*

**Laws 1999, c. 333, An Act to Improve the Efficiency of Environmental Regulation in the Unorganized and Deorganized Areas of the State. §§ 21-22.**

**Sec. 21. Transitional language; natural resources protection laws.** A permit issued by the Department of Environmental Protection prior to the effective date of this Act for an activity altering or adjacent to a protected natural resource within the jurisdiction of the Maine Land Use Regulation Commission and any conditions of that permit continue in effect and may be enforced by the department until the permit expires or is modified by the Maine Land Use Regulation Commission. The Maine Land Use Regulation Commission may enforce a permit it has modified.

**Sec. 22. Authorization to report out legislation.** The Joint Standing Committee on Agriculture, Conservation and Forestry and the Joint Standing Committee on Natural Resources may report out legislation during the Second Regular Session of the 119th Legislature regarding the regulatory responsibilities of the Maine Land Use Regulation Commission and the Department of Environmental Protection. The legislation may propose reassigning the regulatory responsibilities of the 2 agencies to eliminate or reduce duplicative project review and permitting.

**Laws 2003, PL 637, An Act to Change the Point System for Clearing Vegetation Adjacent to Protected Natural Resources, §2.**

**Sec. 2. Rulemaking.** Notwithstanding Resolve 1999, chapter 116, rules adopted by the Board of Environmental Protection and the Department of Conservation, Maine Land Use Regulation Commission pursuant to this Act are routine technical rules as defined in the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A.